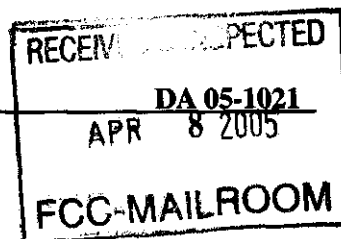


DOCKET FILE COPY ORIGINAL

Federal Communications Commission

Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.

(Enfield, New Hampshire; Hartford and White River
Junction, Vermont; and Keeseville and Morrisonville,
New York)

)
)
) MB Docket No. 05-162
) RM-11227
)
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 6, 2005

Released: April 8, 2005

Comment Date: May 31, 2005

Reply Comment Date: June 14, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by Nassau Broadcasting III, L.L.C. ("Petitioner"), licensee of Station WWOD(FM) ("WWOD"), Channel 282C3, Hartford, Vermont, and Station WXLFFM ("WXLFF"), Channel 237A, White River Junction, Vermont. Petitioner proposes (1) to allot Channel 282A to Enfield, New Hampshire, as that community's first local aural transmission service. In order to accommodate the operation of Channel 282A at Enfield, Petitioner proposes (2) to reallocate Channel 282C3 from Hartford, Vermont, to Keeseville, New York, and modify the license of Station WWOD accordingly. Since the latter proposal would remove the sole local aural transmission service from Hartford, Vermont, Petitioner proposes (3) to reallocate Channel 237A from White River Junction, Vermont, to Hartford, Vermont, and to modify Station WXLFF's license accordingly. Petitioner also proposes (4) to reallocate Channel 231A from Keeseville, New York, to Morrisonville, New York, as Morrisonville's first local aural transmission service. If the petition before us is granted, Petitioner will file appropriate applications to effectuate its proposals.

2. With respect to the proposals to move Station WWOD to Keeseville and Station WXLFF to Hartford, Petitioner invokes the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ The proposed channel reallocations are mutually exclusive with the existing licensed facilities, as required by Section 1.420(i) of the Commission's rules. Because the foregoing reallocation proposals are consistent with the provisions of Section 1.420(i) of the Commission's rules, we shall propose to modify the authorizations of FM Stations WWOD and WXLFF without entertaining competing expressions of interest in the use of Channel 282C3 at Keeseville, New York or Channel 237A at Hartford, Vermont, or requiring Petitioner to demonstrate the availability of additional equivalent channels for use by other parties.

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

3. Petitioner notes that the Commission's FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*² would be served because Petitioner's proposal would provide first local radio broadcast transmission services to Enfield, New Hampshire and Morrisonville, New York (priority (3) under the FM allotment priorities), allow Station WXLF to operate as a full power Class A FM station by eliminating an existing grandfathered short-spaced FM allotment, and provide an overall net gain in people served by Stations WWOD and WXLF. Although the community of White River Junction will lose its only FM service when Station WXLF moves to Hartford, Vermont, White River Junction will continue to receive first local service from AM Station WNHV. Petitioner believes that the proposed reallocation of Station WWOD to Keeseville may result in that station providing a 70 dBu signal over 50 percent of the Burlington, Vermont Urbanized area, thus requiring a *Tuck*³ showing that Keeseville is independent from the Burlington Urbanized Area. Although Petitioner has provided a *Tuck* showing, our engineering studies indicate that such a showing is not required because Petitioner will cover only 13.6 percent of the Burlington Urbanized Area.

4. This proposal complies with the Commission's technical rules and warrants consideration because it could provide a first local service to Enfield⁴ and Morrisonville⁵ and other public interest benefits, including a net gain in service to people by Stations WWOD and WXLF. Consistent with the technical requirements of the Commission's rules, Channel 282A can be allotted to Enfield, New Hampshire, utilizing coordinates of 43-38-30 NL and 72-08-42 WL. Since these coordinates are the center city coordinates for Enfield, no site restrictions are required. Further, Channel 282C3 can be allotted to Keeseville, New York, utilizing coordinates of 44-31-31 NL and 73-31-07 WL, with a site restriction of 3.8 kilometers (2.3 miles) northwest of Keeseville, New York. In addition, Channel 237A can be allotted to Hartford, Vermont, utilizing coordinates of 43-43-45 NL and 72-22-22 WL, with a site restriction of 8.1 kilometers (5.0 miles) north of Hartford, Vermont. Lastly, consistent with the technical requirements of the Commission's rules, Channel 231A can be allotted to Morrisonville, New York, utilizing coordinates of 44-40-19 NL and 73-32-17 WL, with a site restriction of 3.0 kilometers (1.9 miles) southeast of Morrisonville. Since Enfield, New Hampshire, Keeseville and Morrisonville, New York, and Hartford, Vermont are located within 320 kilometers (199 miles) of the U.S.-Canadian border, Canadian concurrence in these allotments has been requested.

² 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

³ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"); see also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) (a reallocation proposal that seeks a preference for providing a first local radio broadcast transmission service to a community must submit a showing pursuant to *Tuck*, *supra*, when the proposed 70 dBu contour will encompass more than 50 percent of an Urbanized Area).

⁴ Petitioner describes Enfield as a town with a 2000 U.S. Census population of 4,618 persons, with its own government that provides services through a public works department, water/sewer department, planning board, zoning board, police department, volunteer fire department and ambulance service. In addition, Petitioner notes that Enfield has many businesses, including several with the name "Enfield" in their names.

⁵ Petitioner notes that Morrisonville is a Census Designated Place with a 2000 U.S. Census population of 1,702 persons, with its own zip code and two post offices. In addition, Petitioner states that Morrisonville has several local businesses, some of which have "Morrisonville" in their names.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Enfield, New Hampshire	-----	282A
Hartford, Vermont	282C3 ⁶	237A
Keeseville, New York	231A	282C3
Morrisonville, New York	-----	231A
White River Junction, Vermont	237A	-----

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before May 31, 2005, and reply comments on or before June 14, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Stephen Diaz Gavin, Esq.
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037

8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with

⁶ Station WWOD was granted a license to specify operation on Channel 282C3 in lieu of Channel 282A at Hartford, Vermont. (See BLH-19960919KA.) The FM Table of Allotments does not reflect this change.

rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷ This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

10. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

⁷ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in *initial comments*, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.